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An Investigation into Possible Problems Arising from Repeal of the Personal Property Tax in South Dakota

Ardelle Lundeen

Allyn O. Lockner

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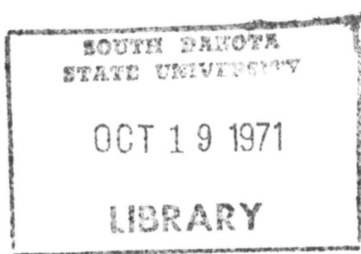
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An Investigation into Possible Problems Arising from Repeal of the Personal Property Tax in South Dakota



Economics Department
Agricultural Experiment Station
South Dakota State University
Brookings

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An Investigation into Possible Problems Arising from Repeal of the Personal Property Tax in South Dakota

By **Ardelle Lundeen**, graduate student in Economics, and **Allyn O. Lockner**, research advisor and professor of Economics

*Research paper submitted
in partial fulfillment of the requirements for the
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There is considerable pressure in South Dakota, as in many states at the present time, for tax relief or tax reform. Much of this concern is directed toward the type of taxes that most local governments and school districts rely on for the major portion of their operating funds. In South Dakota property taxes account for about 69 percent of local government revenue compared to a national average of 45 percent(1).¹ As costs of government continue to rise, the burden on property owners becomes more onerous. The search for means of relief for the property owner continues. One method that has gathered considerable support is the exemption of personal property from taxation. Several prestigious groups or persons have gone on record favoring the repeal of the personal property tax.

Shortly after his election in November 1970, Governor Richard

Kneip appointed a Council for Tax Decision which consisted of bipartisan representatives of a cross-section of South Dakota's population. The Council, composed of farmers, ranchers, businessmen, workers, and professional people, was charged with studying the tax system of South Dakota and making recommendations for reform to the Governor who would study these recommendations and submit them at will to the Legislature. Although repeal of the personal property tax was not one of the formal recommendations agreed upon by the Council, the subject was considered by its members. As one of the members stated,

During meetings of the Council for Tax Decision in December 1970 and January 1971, probably the most frequently discussed topic pertaining to tax reform in South Dakota was the repeal of the property tax on all or some

¹Numbers in parentheses refer to references at the end of the bulletin.

types of personal property
(2).

There are many reasons cited for the repeal of personal property taxes if adequate alternative financing can be substituted. Opponents of the personal property tax claim it is a difficult tax to administer fairly and equitably because of the serious problems involved in listing and valuation. Evasion of the tax is fairly easy for the property owner but is difficult for the authorities to suppress. Many feel that it is unduly harsh on some classes, such as businessmen and farmers, while persons with little property and large incomes do not pay their "fair" share. It is not the purpose of this bulletin to either validate or deny these reasons. They are noted here only to show that recognition of them has been made.

Granted that many valid reasons exist to justify its repeal, the personal property tax should, nevertheless, be retained until completion of a comprehensive study of the possible consequences of repeal. Preliminary groundwork could then be undertaken to ease the adverse effects of any potential problems that such a study might identify. The consequences will vary greatly depending on whether the repeal is partial or complete. If the repeal is partial, what items are to be exempt from taxation? The exemption of household goods would produce a different effect than the exemption of business inventories or livestock. Each class of goods comprises a different proportion of the property tax base, and exemption of one or more of these items would alter that base in vary-

ing degrees depending upon the item or items chosen for exemption.

Exemption of household goods would not answer the criticism of those who consider the tax on business inventories and livestock unfair because it penalizes those who must own property to make a living, many of whom have a low income. Nor would it solve the problem of discouragement of growth and expansion of established businesses and the location of new industries in the state.

Retention of any part of the tax would mean that the problems of evasion and inequitable assessment would remain. The time-consuming and expensive chore of administering the tax would not be eliminated. A thorough study examining the loss of revenue resulting from each of these partial exemptions, or a complete repeal, versus the advantages of each course of action would have to be undertaken if there was to be smooth transition.

After establishing guidelines for partial or complete repeal, the means of replacing the lost revenue could be worked out. Complete repeal would, of course, call for more replacement revenue than a partial repeal. Partial repeal might also result in varying patterns of lost revenue, depending upon the items exempted. An urban governmental unit would lose more revenue if business inventories were exempted, while a predominantly rural unit would lose more with the exemption of livestock. For example, Minnehaha County, perhaps the most urban county in South Dakota, has a total personal property valuation of slightly more than \$44

million; of this, business inventories comprise about 27 percent while livestock makes up 13½ percent. Harding County, located in a sparsely-populated section of the state, has a total personal property valuation of slightly more than \$5 million; business inventories account for 2 percent of this valuation while livestock make up 76 percent (3).

These figures do not tell the complete story, however. What percentage of the total assessed valuation of each unit is made up of personal property? How is the total personal property valuation divided between agricultural and non-agricultural property? If the class of goods that is to be exempted is taxed at the agricultural rate, will this lessen or intensify the impact in predominantly rural units? A thorough investigation into the make-up of

the property in each district would be necessary to answer these questions. This is beyond the scope of this study, but it is necessary to ascertain the full effect of the various alternatives which have been proposed.

In replacement plans, care must be taken that the burden is not shifted from personal property owners to real property owners. This would happen if personal property were eliminated from the property tax base. To raise the same amount of tax money from the reduced base, the mill levy would have to be raised, then the owners of personal property *only* would pay no taxes. The aggregate owners of real property would find themselves paying all of their former taxes plus that of the owners of personal property only.

Statement of the Problem

Responsible persons are aware that these problems exist, and it may be for this reason that repeal of all or part of the personal property taxes has been delayed. Discussions of the Council for Tax Decision found "that the repeal raised several questions which the Council was not able to answer" (4). Three of the more important questions uncovered by the Council were: What are the sources and means by which revenues would be made available to local governments for replacing those revenues lost by the repeal of all or part of the personal property tax? Does the State Constitution permit the Legislature to repeal the tax on personal property or classes thereof? How

would the repeal of the personal property tax affect the taxing capacity of local governments for current operations and capital outlay, as well as their bonding capacity?

In this publication some of the problems that may arise will be explored with the major emphasis on the last question. The first two questions will be considered only as they relate to the last. There is no contention that the problems cited in this report are the only problems that may arise or even the most serious, but only that they are potential sources of trouble and need to be investigated prior to the repeal of all or any part of the personal property tax. No effort will be made to solve the problems cited.

Objectives

The general objective of this study is to create an awareness that preliminary work is necessary if a repeal of the personal property tax is to achieve the desired goals with minimum disturbance and adverse effects upon taxpayers and local units of government.

Specifically, the objectives are:

- (1) To determine if the South Dakota Constitution and **South Dakota Compiled Laws** contain a clear definition of personal property.
- (2) To determine if and how the repeal of all or part of the personal property tax might affect the capacity of state and local governments to raise the revenues required for both current operations and capital outlay as well as

their capacity to incur debt.

- (3) To list the tax levies which are based upon property valuation along with their location in the Constitution or the statutes laws to assist anyone who may be concerned with revision of these provisions or areas where changes may be necessary.
- (4) To survey industries which pay an alternative tax in lieu of a conventional personal property tax so as to determine if the repeal of the personal property tax would have an effect on their taxation or on the tax relationship between these industries and others paying a conventional personal property tax.

Definition of Personal Property

One of the potential sources of trouble if personal property taxes were repealed is the problem of defining real and personal property in such a manner that an item could be placed in one or other of these classes without question. If this is not possible, costly and lengthy litigation may result.

In 1969 the North Dakota Legislature repealed the personal property tax in that state. One of the serious problems encountered was in the definition of real and personal property. In some cases items were classified as real in one city and personal in another. Apparently their statutes were not clear, as they found it necessary in 1971 to pass legislation which attempted to clarify and clearly define real property. It is too soon to determine if they were successful(1).

This chapter surveys the South Dakota Constitution and **South Dakota Compiled Laws** in an attempt to ascertain if such an unambiguous definition exists. Subsequently, previous problems of interpretation are examined.

Constitution

The Constitution of South Dakota contains no definition of personal property. Article VIII, sec. 15 em-

powers the Legislature to classify property within school districts for the purpose of school taxation. Article XI, sec. 2 empowers the Legislature to classify money and credits as well as physical property to the end that the burden of taxation may be equitable on all property. It would appear that the drafters of the Constitution took it for granted that a distinction does exist between personal and real property; these two terms are used in several sections in the Constitution to indicate two separate and distinct classes of property.

South Dakota Compiled Laws

The **South Dakota Compiled Laws 1967** contain definitions or enumerations of personal property in at least three chapters. The section defining terms as used in the **South Dakota Code of 1939** states that unless the context otherwise plainly requires, the following shall be the meanings ascribed to the words real and personal property:

- (1) "Personal property," includes money, goods, chattels, things in action, and evidences of debt;
- (2) "Real property," coextensive with lands, tenements, and hereditaments(2).

In the section listing property subject to taxation, real property is listed for the purpose of taxation to be:

. . . the land itself, whether laid out in town lots or otherwise, and all buildings, structures, and improvements, trees or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appretaining, and all mines, quarries in and under the same(3).

A more detailed itemization of personal property is included in this section.

Personal property shall, for the purpose of taxation, be construed to include all goods, chattels, money, credits, and effects, wheresoever they may be; all ships, boats, and vessels belonging to the inhabitants of this state, whether at home or abroad, and all capital invested therein; all money at interest, whether within or without this state, due the person to be taxed, and all other debts due such person; all public stocks and securities; the capital stock of all insurance companies organized under the laws of this state; all stock in turnpikes, railroads, canals, and other corporations, except national banks out of the state, owned by inhabitants of this state; all personal property of moneyed corporations, whether the owners thereof reside in or out of the state, and the income of any annuity, unless the capital of such annuity be taxed within the state, all shares of stock

in any bank organized, or that may be organized, under the laws of the United States or of this state; and all improvements made by persons upon lands held by them under the laws of the United States, except trees planted under the Timber Culture Act, and all such improvements upon lands, the title of which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property(4).

Separate sections are used to clarify the classification of specific items. This might indicate that difficulties in interpretation and classification have been with us for a long time as all of the statutes in Title 10 which are cited here were a part of the original code written in 1897. Of course, revisions and amendments have been made. Those items selected for specific classification as personal property include manufacturer's inventory, equipment, and tools(5). A brief description and an enumeration of this property is also included in this section to further clarify the meaning. A merchant's inventory is another item selected for specific treatment in this section. The value of the inventory is to be included in the personal property listing of each merchant(6).

A more concise definition of personal property is contained in Title 43 under classes of property. Real property is defined as (1) land; (2) that which is affixed to land; (3) that which is incidental or appurtenant to land; (4) that which is

immovable by law. Every kind of property that is not real is personal(7).

It would appear from the foregoing that the Legislature has carried out its constitutional directive to classify property. The last definition is not contradictory in itself, but taken together with the second there could be areas of contradiction. The second definition (10-4-2, 6) by itself contains contradictions. Real property is defined to include all structures and improvements on land, while the definition of personal property states that improvements on land which is owned by the United States or railroad companies, and leased to someone else are personal property. In other cases the terms used are general and may be open to differing interpreta-

tions. What constitutes an improvement? How immovable does an object have to be to be classified as real property? What about fixtures?

For purposes of taxation, more than two classifications of property exist as can be noted from the multitude of special taxes placed on specific items. The Legislature classifies monies and credits as items of personal property, yet lists and taxes them separately(8). This is true of many other items. With the items mentioned specifically, there is no problem of definition. They will be classified and taxed as stated in the statutes. At the present time, everything else is either real or personal and as long as every single item cannot be specifically classified in the law, difficulties of interpretation may arise.

Problems of Interpretation

With both personal and real property taxed at the same rate, the distinction between them is not presently of overriding importance and there appears to be no serious problems of classification. If an item is classed as real in one jurisdiction and personal in another, any problem could probably be solved without lengthy litigation because a change in classification would not affect the tax bill of the owner, nor the tax receipts of the jurisdiction. Assessors exhibit a certain amount of flexibility in these matters. The City Assessor in Brookings indicated that in some isolated instances,

personal property may be classified as real as a convenience to the property owner. Mentioned as examples are stoves, refrigerators, and air conditioners (not built-in) provided by the owners of apartment buildings. These items are assessed as a part of the real property(9). Under our present taxing arrangement, this makes little difference. It may be a convenience for the property owners, and no one is harmed by it as long as both real and personal property are taxed at the same rate.

⁹Statement by Howard Klein, Brookings City Assessor, personal interview, July 9, 1971.

If there were to be a different rate for real and personal property or if one should be repealed, property owners would probably attempt to secure the more favorable classification on those items in which the classification was not clear. This was exemplified after the Legislature amended the statute relating to the definition of property as agricultural and non-agricultural in 1967(10). In 1967-68 the Attorney General was requested to render three opinions in this area. One questioned the general determination of property as agricultural or non-agricultural(11). Another asked if county auditors should classify structures on land as agricultural property(12). The third opinion concerned the interpretation of the term "agricultural property." Does it include household goods owned by the farmer?(13). It might be well to note here that the limit that school districts may levy on non-agricultural property is 40 mills while that for agricultural property is 24 mills(14).

There are areas where the same type of property may be classed as either personalty or realty. If property were classed as realty and personal property taxes were abolished, this could result in requests for changes in classification and, possibly, result in litigation. A decision handed down by the courts stated that growing crops may be either realty or personalty depending upon the intent of the owner(15). Structures built upon leased land are taxed as personal property in this state as well as some other states. Service stations and grain elevators constitute the two largest

groups of buildings located on leased sites in South Dakota(16). This means that if a service station operator or petroleum company owns the lot and the structure upon it, the entire property is assessed as real. The Brookings County Assessor indicated that all of the auxiliary equipment of bulk dealers might also be classed as real in this situation(17). But a service station building owned by a petroleum company and built upon a leased site is assessed as personal property. The same situation exists for grain elevators, cabins, houses, and other structures. Would the repeal of the personal property tax mean the owners of these structures on leased sites would pay no taxes while their neighbors with comparable structures built on lots which they owned received no tax relief?

As an extreme example, what if every home owner sold his lot to his neighbor? Under the present law and the interpretation of it, all of the houses in the state would be classed as personal property. A repeal of the personal property tax before this situation was corrected, would result in serious loss of tax revenue. North Dakota anticipated possible problems, and in 1967 the Legislature reclassified buildings on leased land as real property(18).

In some instances fixtures and tools are classed by statute as realty. Specifically cited are machinery and tools used in working a mine(19). Generally, other establishments list their tools as personal property. Would repeal of the personal property tax afford equal treatment to the two types of establishments?

Summary

Definitions for personal property which exist in the statutes of South Dakota are couched in general terms which allow for more than one interpretation. Some contradictions exist in the definitions themselves, but the problem may be more in what is not explicitly stated than what is. Specific items of property could be placed under more than one of the general definitions as they now read. The only positive method of avoiding problems of interpretation is an item-by-item listing of every conceivable piece of property. This is not feasible, so, perhaps, the next best alternative is to state the law as clearly as possible and spell out the classification of those items which are known to pose the most serious problems of

classification. As noted previously, with little need for distinction between personal and real property up to the present, few serious problems of classification have arisen and it may be difficult to anticipate all sources of conflict or even the most serious. A thorough study of the experiences of other states should aid in this task. Assessors may also be able to point out potential problem areas.

Part of the preliminary groundwork for repeal of the personal property tax should involve an attempt to clarify the existing South Dakota laws and an enactment of any necessary new ones to avoid loss of tax revenues and minimize litigation.

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Introduction

There is no question that the repeal of the personal property tax could affect the ability of governmental units to raise the money needed to finance the necessary expenses of government. Just how much and in what manner would be determined by whether there is either total or partial repeal, the amount of replacement revenue, and the allocation formula. It is possible that the entire change could take place with a minimum adverse effect if proper foresight and planning were exercised.

Particular consideration will have to be given to two areas: debt limitations and the monies raised by an annual mill levy, either for current expenses or for capital outlay purposes. Both of these areas are limited by state law and many times this limitation is tied to property valuation.

The first section of this chapter deals with debt limitations, specifically the limits for various units of government. The effect of repeal on each unit will depend on how much of the personal property is exempted from taxation and the present level of debt for each unit.

Limitations on the annual mill levy are discussed in the second part of the chapter. Conceivably, the repeal of the personal property tax would not affect this area if a formula could be worked out to exact-

ly replace the revenues lost by each unit. The complexity of the entire field of assessment and taxation renders this highly improbable. Many factors determine precisely how each unit of government would be affected in actuality. First, would the repeal be partial or complete? If partial, what items will be exempted? The composition of personal property varies in each taxing unit so the effect in each unit would be dependent upon which item or items are exempted. What proportion of personal property owners are also real property owners? Would relief for some mean more taxes for others? How near is the unit to the limitation on the general mill levy and to each of the special mill levies? These questions are posed to indicate areas that will need to be researched before a satisfactory replacement formula can be worked out and before the full effect of the repeal of the personal property tax on levy limitations would be known.

Proceeding on the assumption that it would be useful to know what the limitations are, what specific items are included for special levies, and where these limitations are specified in the statutes, a listing is included in section two of this chapter. As stated previously, if adequate replacement revenues are provided, no changes may need to be made in these limitations but, if

not, revision of the statutes may be necessary. Some special levies with exceedingly small limitations may be particularly hard-hit in jurisdictions with a large percentage of personal property. For instance, some special levies are limited to one tenth of one mill. In a jurisdiction with \$500 thousand total valuation, one third of which is personal property, the amount of money which could be raised under this levy would be reduced from \$500 to \$333 if personal property were removed from the valuation. Activities operating on an already small budget might find it difficult to adjust to a further reduction in that budget.

The third section of this chapter discusses some of the problems that may be encountered in developing a satisfactory method of replacing funds that local governments would lose by a repeal of the personal property tax. Means of replacing these funds are being considered now by the various groups working on tax reform in the state so no consideration will be given to this matter here. But regardless of the means employed to raise the money, some method will have to be devised to allocate the money to each unit of local government, not just county, city and school district, but township and special district as well.

Limitations on Public Indebtedness

Governments in the state of South Dakota are restricted in many ways in the amount of debt that they may incur in the form of general obligation bonds. Sometimes, a ceiling, stated in terms of dollars, is placed on the debt that a unit may incur for a specific purpose. This may range from a few hundred to several thousand dollars depending upon the size of the particular unit and the reason for the debt. Sometimes an affirmative vote of the citizens is necessary. Sometimes a unit is denied the option of going into debt under any circumstances for a certain purpose. Quite often the law states the type of debt that is permitted. For certain purposes, only revenue bonds may be issued — general obligation bonds are not allowed.

With this in mind, a search of the Constitution and the **South Dakota**

Compiled Laws 1967 was conducted with the purpose of pinpointing areas where personal property might be involved in these restrictions. Several instances were located where the assessed valuation of all taxable property in the governmental unit formed the basis for the limitation on debt. It might be well to mention two points here. First, these limitations usually cover all types of debt, warrants as well as general obligation bonds, minus the balance carried in the appropriate sinking funds or cash balances. Second, there may be other restrictions contained in these provisions, such as a two-thirds vote of the people, but for the purpose of this study the other restrictions were irrelevant and no mention will be made of them.

In the cases where the debt restriction is based on assessed valu-

ation, the restriction is given as a percentage of the assessed valuation of all taxable property of that unit. This would mean that if the personal property tax were repealed, the total amount of debt permissible would be reduced by whatever percentage of the total assessed valuation was composed of personal property. For example, a unit with an assessed valuation of \$1 million with 20 percent composed of personal property and with a 5 percent debt limitation would find its limit of debt reduced from \$50 thousand to \$40 thousand if personal property were exempted from taxation and valuation. Some units may have no problem, but others who are at or near the limit might run into difficulties if no adjustments were made in the debt limit when and if the personal property tax were repealed. This would be especially true of units where personal property comprises a high fraction of their total assessed valuation. Those units at the limit of their permissible debt at the time of repeal might find themselves in an awkward position in contravention of the statutes with no means of reducing their debt instantaneously.

The South Dakota Constitution contains several sections which designate debt limits for state and local governments. Constitutional amendments requiring a vote of the people would be needed if it became necessary to raise or remove these limitations. Another alternative would be to base the debt limitation on something other than assessed valuation but this, too, would require a constitutional amendment.

Article XIII, sec. 1 of the Constitution limits the state to a debt of $\frac{1}{2}$ of 1 percent of the assessed valuation of the taxable property in the state for the purpose of developing the resources and improving the economic facilities of South Dakota. Sec. 16 of this same Article empowers the state to incur indebtedness not to exceed $\frac{1}{2}$ of 1 percent of the assessed valuation of all property in the state for the purpose of engaging in internal improvements.

Article XIII, sec. 4 places the limit of the debt for any county, city, or civil township at 5 percent of the assessed valuation of all taxable property in the unit. The debt for any school district shall never exceed 10 percent of the assessed valuation of all taxable property in the district. This same section allows any county, municipal corporation, civil township, district, or other subdivision to incur an additional indebtedness not to exceed 10 percent of the assessed valuation of its taxable property to provide water and sewerage, for irrigation, domestic uses, etc. Further, any city with a population of eight thousand or more may add an indebtedness of 8 percent or less upon the assessed valuation of all taxable property of the city to construct railways, electric lights, or other lighting plants. As noted before, there may be other limitations on the incurrence of this debt which are not covered in this paper.

The **South Dakota Compiled Laws 1967** also contain references to assessed valuation in specifying limitations on debt. If it became necessary to change some or all of these provisions, the Legislature

could do so by enactment of the appropriate laws.

Cities are allowed by statute to borrow a sum to pay a judgment that may have been obtained against it. The amount that it may borrow for a fiscal year is equivalent to a tax levy of ten mills on the assessed valuation of that city(1).

The maximum debt that an unorganized county may incur for highway purposes is 5 percent of the assessed valuation of that unorganized county(2).

Counties are allowed to issue bonds to purchase an existing hospital and site, or other suitable buildings and site, or to purchase a site and construct a building and equip it. For this purpose the counties may issue bonds as long as they do not exceed 2 percent of the assessed valuation of the taxable property within the county(3).

Annual Mill Levy Limitations

The second major area where the revenue requirements of governments may be affected by the repeal of the personal property tax is in the limitations outlined by the statutes on the annual mill levy that units are allowed to impose to finance expenses of government for both current expenses and capital outlay. Almost all property taxes are levied as a specified number of mills per dollar of assessed valuation, and limitations on these levies are stated in the same manner. Elimination of personal property taxes would reduce the total assessed valuation of a governmental unit by whatever percentage personal property composed the total valuation. This, in

The number of situations where repeal of the personal property tax would affect the ability of a unit of government to borrow money is not great, but these may well prove to be the most troublesome aspects of replacing funds lost to local governments by a repeal. The more important limitations involve constitutional restrictions which are usually the most difficult and time-consuming to alter.

One alternative solution to the problem of debt limitation being used by some units of government is the issuance of revenue bonds which are not subject to limitation as are general obligation bonds(4). However, this method can only be used where the proceeds of the bonds are used for an improvement which will produce revenue. Not all improvements are of this type.

turn, would reduce by that same percentage the maximum amount of money that could be raised by a mill levy on the total assessed valuation.

Using figures obtained from annual reports of the South Dakota Department of Revenue, a study was made to determine what percentage of the assessed valuation in each county is composed of personal property and how near each county is to its statutory limitation on the levy for the general fund. Overall, personal property makes up approximately 22½ percent of the state's total assessed valuation. In individual counties the percentage ranges from 14 to 45 percent. The median is 25 percent(5).

Of the sixty-seven organized and unorganized counties in the state, two appear to be over their limitation, twenty-nine at or within one-half mill of the limitation, fourteen between one-half to one mill below the limitation, and the remaining twenty-two are more than one mill below the limitation(6). This refers to the statutory limitation on the general fund only and takes no cognizance of the possibility that these counties may have voted to exceed their levy. If three fourths of the voters in a county approve, the ceiling on the limitation may be increased by 10 mills. This may explain the two counties that appear to be over the limitation and might mean that some of the other counties are not as close to the limit as it appears. The author did not verify this with each county.

Because of the wide range in the findings of the study, it is not possible to make a general conclusion other than to point out that a combination of a high fraction of personal property valuation and nearness to the levy limitation could provide a difficult problem for a county if personal property were eliminated from its base for assessment and taxation, and replacement revenues were inadequate. A county at the levy limit with 25 percent personal property valuation would need to have one fourth of its revenues replaced just to be in the same position after repeal as before. A county at the limit of its levy when and if personal property taxes were repealed, might be required to seek approval of the voters to increase the ceiling on the statutory limitation. There is no assurance this ap-

proval would be forthcoming or, if approval were given, that the additional mill rates would compensate for the loss in revenue caused by the personal property exemption.

A similar study conducted in 1969-70 by the South Dakota Education Association Research Division to determine the status of school districts in regard to their statutory levy limitations showed that 26.9 percent of the independent school districts in South Dakota were levying the maximum of forty mills on non-agricultural property and twenty-four mills on agricultural property. Another 22.1 percent were levying between thirty-five and forty mills on non-agricultural property and between twenty-one and twenty-four mills on agricultural property(7).

The levies for taxation are of two types, both of which are limited by law. The general mill levy for each unit of government covers the normal operating and usual expenses and any other expenses of government, unless it is specifically stated that they are not included in the general levy. The second type is the special levy. The money raised by special levies can be used for only one specific purpose.

General Levy Limitations

Article XI, sec. 1 of the Constitution empowers the state to provide an annual tax to defray the ordinary expenses of government at a levy not to exceed two mills on each dollar of assessed valuation of the taxable property of the state. This same limitation is imposed on the state in *SDCL 1967, 10-12-2*. At the present time this levy limitation is

not of great significance for the state, as South Dakota has not levied a state property tax since 1955 and has only done so in five years since 1932(8). The general mill levy limitation on taxes by counties is scaled, with the limitation decreasing as total valuation in the county increases according to the following schedule:

- (1) Less than \$25 million valuation—not to exceed 10 mills
- (2) \$25 to \$40 million valuation—not to exceed 9 mills
- (3) \$40 to \$50 million valuation—not to exceed 8 mills
- (4) \$50 to \$65 million valuation—not to exceed 7 mills
- (5) \$65 to \$75 million valuation—not to exceed 6 mills
- (6) More than \$75 million valuation—not to exceed 5 mills(9)

As noted in the study cited previously, many counties in South Dakota are within one mill of the above limitations.

The maximum levy for unorganized counties is limited to five mills on the assessed valuation of taxable property unless there are more than 4,500 inhabitants, in which case an additional two mills may be levied(10).

Civil townships are limited to an annual tax levy not to exceed five mills on all taxable property(11).

The maximum levy in school districts varies according to the schools operated in the district and by the type of property. Districts which operate a twelve-year school may levy up to forty mills on the assessed valuation of all taxable property subject to the twenty-four mill lim-

itation on agricultural property and the four mill limitation on money and credits. Districts which operate either an elementary or a four-year high school may levy up to twenty mills subject to the limitations on agricultural property and money and credits(12). For purposes of school taxation, property has been designated as agricultural or non-agricultural. The aforementioned levy limitations apply only to non-agricultural property. A school district which operates a twelve-year school or a fully accredited four-year high school may levy up to eight mills on all property and thereafter one half the tax levied on non-agricultural property may be levied on all agricultural property, but not to exceed twenty-four mills on agricultural property (13). School districts are the taxing units which are almost all nearing the levy limit in South Dakota. A 25 percent reduction in the base upon which they levy their tax would cause problems in most districts unless adequate alternative sources of revenue were provided.

First and second class cities and incorporated towns have a maximum mill levy of fifteen mills on the assessed valuation of their taxable properties(14).

All subdivisions of local government may increase their maximum mill levy by ten mills if they hold a special election and three fourths of the voters approve the increased levy(15).

Special Levy Limitations

In addition to the general levies discussed in the preceding section, each governmental unit is empow-

ered to make special levies for specific items over and above all other levies authorized by law. Most of these special taxes are limited to a stated mill levy on the assessed valuation of all taxable property in the unit. Again, in the case of special levies, as with the general levy, a reduction in the assessed valuation by elimination of a portion of that valuation would result in a decrease in potential revenues for each of these items from property tax receipts.

A search of the statutes reveals the following items which are based on assessed valuation in each of these units of government. Because the state has never relied on the property tax for a substantial portion of its revenues, very few state taxes are based on the valuation of property. However, there are two taxes mentioned in the statutes. The state is authorized to levy annually a tax not to exceed one-half mill on the assessed valuation of all property in the state to pay the interest and principal of general obligation bonds which it may issue for the cement plant(16). For purposes of the state highway fund, the state may levy not to exceed one-tenth mill per year on the assessed valuation of all taxable property(17).

The local subdivisions of government which rely more heavily on the property tax for revenues are allowed many special levies by law. For conciseness these special levies will be enumerated for each unit. Unless otherwise stated, these special taxes are levied on each dollar of assessed valuation of all taxable property in the unit and are over and above all other limitations im-

posed by statute. The levy may be up to, but not exceeding the figure stated.

County government. For the county unit of government the following special levies are authorized:

- (1) One and one-half mills to provide a fund to be used to acquire a site, construct, renovate, improve, remodel, alter, add to or repair a courthouse, office or jail building (18).
- (2) One-fourth mill to provide for acquisition of site, purchase, erection, renovation, improvement, remodeling, alteration, addition to or repairing of county historical museum or a historical museum owned and operated by an incorporated non-profit historical association(19).
- (3) Three-tenths mill to acquire, erect, or maintain buildings to be used for fair or exhibition(20).
- (4) One-half mill to pay the necessary costs of classification (or reclassification) of real property in the county(21).
- (5) Two mills for a poor relief fund(22).
- (6) Two mills (three mills if there is an irrigation district) to construct, maintain, and repair roads and bridges (23).
- (7) Two mills to create a special "county highway and bridge reserve fund"(24).
- (8) One mill to provide a special education fund for the handicapped(25).

- (9) One mill for the support of mental health centers or clinics(26).
- (10) Two mills for a county snow removal and emergency fund(27).
- (11) One mill to provide a sinking fund to establish a hospital (28).
- (12) One mill in counties with assessed valuation of twenty-five million or less, or one-half mill in counties with an assessed valuation of more than twenty-five million for the purpose of operating and maintaining the county hospital(29).
- (13) One-half mill to establish a county ward in a private hospital(30).
- (14) One-half mill to aid a city in establishing a hospital if the county has no hospital(31).
- (15) One-half mill upon all taxable property outside any municipality which provides fire protection to provide fire protection (not to exceed \$6,000 per year)(32).
- (16) One mill for a library(33).
- (17) One-eighth mill to establish a fund for promotion of industry, recreation, and tourism(34).
- (18) One mill in counties with assessed valuation over sixteen million dollars and two mills in counties with less than sixteen million dollars for a weather modification program(35).
- (19) One mill to acquire any one park or project or to create bodies of water for park purposes. However, this levy shall be part of the general fund levy(36).
- (20) One-tenth mill to promote, establish and maintain recreational, educational, and other activities for the elderly(37).
- (21) Unorganized counties may levy five mills for highway and bridge purposes(38).
- (22) When school districts of an unorganized county have registered school warrants outstanding, the levy limit for highways is two-and one-half mills(39).

Municipal government. Municipal governments are allowed to make the following special levies:

- (1) Three mills for parks(40).
- (2) One mill for forestry purposes(41).
- (3) Eight mills to establish a public gymnasium or community house and grounds, or to issue bonds in similar amount; annual maintenance costs shall not exceed one mill(42).
- (4) Two mills to create a playground, children's park, or to encourage athletics(43).
- (5) One mill to pay into a sinking fund for a specific improvement the city is authorized to make(44).
- (6) Five mills to build waterworks without the necessity for a special election(45).
- (7) Two mills to support, acquire, or maintain a library (46).
- (8) Two mills to create a special building fund for a library (47).

- (9) Five mills in cities having assessed valuation of eight million dollars or less, and three mills in cities with assessed valuation over eight million dollars to operate and maintain a hospital(48).
- (10) Two mills for airport purposes(49).
- (11) One mill to finance urban renewal(50).
- (12) One mill to build up reserves in city firemen's pension fund(51).
- (13) One-tenth mill to establish a fund to promote, establish, and maintain recreational, educational, and other activities for the elderly(52).
- (14) Two-tenths of a mill for a fund to purchase, construct, and maintain or support an art gallery or museum(53).
- (15) One mill to furnish free musical concerts to the public (not within general limitation if authorized by vote of the people)(54).
- (16) Two mills for creation of a depreciation reserve if voted by the people(55).
- (17) One mill to create a fund to purchase fire fighting equipment and buildings(56).
- (18) One-half mill to create a fund to maintain volunteer fire department(57).
- (19) Two mills to cover city's annual contribution to city retirement fund(58).
- (20) Two mills to establish a fund to be used for snow removal or repair of damage caused by same or to purchase snow removal equipment(59).

Furthermore, the law states that

every individual officer of the city is held liable if they make contracts going beyond the maximum mill levy specified by law(60).

School districts. School districts are allowed several special levies by law:

- (1) One-half mill to establish a fund for payment of pension to retirement of employees (61).
- (2) After reorganization, if a totally dissolved school district has liabilities in excess of assets, the county board may levy a tax on the dissolved district not to exceed ten mills in any one year to discharge balance of liabilities (62).
- (3) Twenty mills to pay a judgment obtained against it (63).
- (4) Five mills annually for a capital outlay fund(64).

Township government. Townships are allowed to levy one mill to create a snow removal reserve fund (65).

Special districts. There are special districts which are units of government, often with the power of taxation, which have been created for one specific purpose. These districts may include all or part of another unit of government or cut across boundaries of other units. Levy limitations for some of these districts are as follows:

- (1) A hospital district may levy not to exceed five mills to purchase, construct, or acquire a hospital, nursing home, or home for the aged (66).
- (2) A hospital district may levy

not to exceed one mill to operate and maintain a hospital(67).

- (3) Water conservancy districts may levy from one-tenth to one mill to perform their duties(68).
- (4) Soil conservation districts may levy up to one mill for operating revenue(69).

All political subdivisions. Finally, some statutes include all or several political subdivisions in their provisions. These levy limitations are as follows:

- (1) To maintain a full-time health department any political subdivision may levy not to exceed one mill if necessary funds are not available in the general fund(70).
- (2) Any subdivision may levy not to exceed one mill for weed control programs(71).
- (3) Community centers may be maintained by a levy not to exceed five mills on each dollar of assessed valuation of each township or school district(72).

Replacement Formulas

Several points must be considered when devising a method for replacing revenues lost to local governments by personal property tax repeal.

Does the state intend only to pay to each local unit the amount that would have been raised through the personal property tax or is some equalization effort to be made? If the intent is the latter, the replacement formula would be more complex and difficult to administer. Before equalization could be undertaken, assurance that local units of government were raising as much revenue on the local level as other comparable units would be necessary. Are the sales-assessment ratio on real property uniform among the various subdivisions? This would indicate that all units were levying equitably on the property remaining under taxation after the repeal, and equalization would not be favoring some property owners at the expense of others.

Is this to be an across-the-board

replacement or is it to go to only some units? For example, if an amount equal to all personal property taxes levied by all local governmental units are allocated to the school districts therein, the schools could reduce their real estate levy by the amount of the excess over their previous personal property tax receipts. The other units which received no replacement funds could raise their real property levy by enough to cover the amount they formerly received from the personal property tax. Thus, on a county-wide basis the total real estate levies would be the same as before repeal. Because there were no personal property tax levies, the property owner's tax bill would be reduced by the amount he formerly paid in personal property tax.

In a law enacted in South Dakota in 1966, a tax relief fund was established which allocated funds to school districts. One half of the fund was distributed to the schools on the basis of the percentage that

their operating expenditures were to the total operating expenditures of all the schools in the state. The other half was prorated on the basis of the percentage of the total assessed valuation of the state that was contained in each county. The school levy was then reduced by the amount of the dollars received and this benefit prorated to each property owner in the district(73). A formula of this type may be appropriate as a one-time situation, but on a continuing basis would not suffice. This method makes no attempt to replace entirely the amount lost by a personal property repeal. Doubtless, this would mean that if there was a repeal, the local governments would be attempting to replace the difference by increased levies on real property or other local taxes.

This type of replacement makes no adequate provision for the disparity in the proportion of total valuation that is made up of personal property in each county. Two counties may have the same total valuation, but in each county personal property makes up a different percentage of that valuation. (The study mentioned earlier points out that this ranges from 14 percent to 45 percent in the counties in South Dakota)(74). Under the plan described in the preceding paragraph, each of the two counties would receive the same percentage of the tax relief fund. If a replacement formula used the same basis as the tax relief fund, there would be no attempt to link replacement funds to revenues lost from personal property tax repeal and the formula would therefore be totally unacceptable.

If the state intends to replace the money previously raised by personal property levies, what provisions can be made for growth over the years and changes in the proportion of real to personal property? Would a formula which was equitable to the various subdivisions today remain so in five or ten years?

North Dakota formulated a plan for paying back revenues lost to local governments when the personal property tax was repealed in that state. Their intent was to replace only that amount of money that would have been raised from the personal property tax with provisions made for the growth that could be expected in personal property over the years.

The year 1968 was chosen as the base year. Each local unit of government receives annually from the state general fund the amount that was raised by their personal property tax levies in that unit in 1968 plus one dollar for every four-dollar increase in real estate tax levies in subsequent years. In 1968 the ratio of real to personal property taxes was four to one(75). This formula allows for growth but makes two assumptions: (1) that the overall average growth rate of real and personal property taxes in the state has been and will continue to be the same, and (2) the proportion of personal to real property in each unit will remain the same as it was in 1968. Citing again from the experience of North Dakota, research conducted in that state has shown that in the period from 1960-1969, average growth of the real property tax was 6 percent while that of the personal property tax was 2 per-

cent. If these trends continue, local governments would receive more in replacement revenues in the future than they would have received from the personal property tax had it not been repealed. Legislators are considering alternative formulas which would more closely reflect the true growth rate(76). The second assumption cannot be tested by a study of past data. Because the composition has remained the same in the past foretells nothing absolute about the future. An unexpected event, technology, economic conditions, and many other factors may cause movement which would completely alter the real-personal property make-up of a county. For instance, an oil strike multiplies the value of land, or the establishment of a large business triples business inventories. These events would not be accounted for in a growth formula as outlined.

Perhaps, the only means of checking any formula would be the re-assessment of all personal property in five or ten years to determine if the formula is repaying funds adequately. In fact, assessment of personal property could be continued annually by the counties, and the state then replace exactly the amount that would have been raised by the levy on personal property. This is hardly practical, however, because of the expense and work involved and the lack of assurance that the assessment would be any more accurate than past and current assessments which is one of the reasons for seeking repeal.

A third alternative would be not to replace any of the funds and consider it a local problem with the ad-

ditional needed funds to be raised through other forms of taxation locally. Local governments could be empowered to impose other forms of taxation as they wished, such as income taxes, local sales taxes, use taxes, etc., to make up the needed revenue. Most taxation of this type could prove difficult and expensive to administer on a local basis unless collection was done centrally by state government and the money channeled back to local governments.

A combination of these methods might prove effective. A careful study of the past receipts from personal property and real estate taxes should fairly accurately indicate growth rates. Based on the growth rate of these taxes and the ratio of personal to real property, a formula could be worked out to allocate monies to each subdivision of government. The aim in the first years should be complete replacement of the revenues lost by repeal of the personal property tax. If after a few years changes in the patterns of real and personal property resulted in need for additional funds in some units, local governments could by then have had the time to study their needs and institute some means to raise the additional money locally. Because the state would still be allocating money to the local units, these units would raise locally only the increase necessitated by the change in the make-up of property which should not occur rapidly or greatly.

These are just a few of the replacement formulas which have been used in this and neighboring states. Many other formulas which

could be based on criteria other than the property valuation or tax are feasible. Income and population would be a reasonable basis for a replacement formula. The important point is that the property tax

forms such a large part of local government revenues that a reduction in any part of it without adequate replacement monies would seriously hamper local governmental units.

Summary

Revenues for current expense and capital outlay, as well as the limitation on debt in state and local governments, are dependent upon taxable property valuation in many cases. Any change in the personal property tax structure which would change that property valuation could affect governments in those areas. The ultimate result could range from no effect at all to a devastating reduction in governmental financial capacity—the actual result dependent upon whether the personal property tax repeal was partial or complete and the preparations made before actual repeal was undertaken.

Monies lost to local governments could be replaced by state government and the development of a workable and adequate formula would provide a smooth transition with minimum disturbance.

The loss of debt capacity which would occur if part of the property valuation were deleted presents a greater problem. The limitations on governmental debt are contained in the Constitution and amendments would be required to change them. This process, which is time-consuming and requires an affirmative vote of the people, may prove to be the most difficult to complete before repeal.

It is impossible to state exactly what problems in the area of government finance may result if the personal property tax is repealed without knowing what other actions would be taken along with repeal. But it is certain that the means to replace the revenues lost by exemption of personal property from taxation is not the only subject for consideration prior to repeal of this tax.

Introduction

Many industries are singled out for special treatment in the area of taxation. The taxation of these industries usually follows one of two patterns, but in neither case is their property assessed in the usual manner with the county assessor valuing their personal and real property separately with local governments imposing the regular levy upon both. Instead, their property may be assessed by the Commissioner of Revenue who certifies the valuation to the local governmental unit or the state. Another method is to tax revenues or products of the industry rather than its property. Whatever the method used, it means differential treatment for some industries, but this does not necessarily imply preferential treatment.

These methods of taxation have built up over the years for varying reasons, not all of which are readily apparent. Possible causes might be the difficulty of assessing a business which has its property spread over two or more counties. Another might be the unfamiliarity of county assessors with the type of tech-

nical equipment involved in utilities, railroads, and the other centrally-assessed industries. Assessors from two counties might value identical property very differently in each county.

Whatever the reason for this special treatment, one might assume that the situation has evolved to the point where the taxation of those industries which are treated separately and those which are taxed in the conventional manner on the value of their real and personal property is fair and equitable. If such be the case, would the repeal of personal property taxes upset this balance and necessitate changes in some of these laws which are concerned with special treatment for various industries? The disposition of the monies received from these taxes also varies from case to case so the revenue of different units of government would be affected if changes were made in some or all of these industries' taxation.

A brief summary of some of the industries which are centrally assessed and those which pay alternative taxes follows.

Centrally-Assessed Industries

Several major industries in the state are assessed by the Commissioner of Revenue. The office of the Commissioner of Revenue certifies the value to the appropriate auditor of property of the industry that is

located in each jurisdiction. This property is then taxed at the rate prescribed by law and the monies received are credited to the appropriate fund.

In the case of railroads, the law

states that all "operating property" shall be assessed by the Commissioner of Revenue and not by local assessors. Operating property shall

... include all tracks and right of way, station grounds, all structures and improvements on such right of way or station grounds, all rights and franchises, all rolling stock and car equipment, and all other property, real or personal, tangible or intangible, connected with or used in the operation of the railroad ... (1).

This assessment shall include all capital stock and securities of the railroad with due consideration for the market value of shares of stock and bonds outstanding, and indebtedness. The Commissioner shall assess the property as a unit. Notice shall be given to each county or city auditor of the value of the railroad property in each county or municipality. This valuation shall have been determined by prorating the total value over the miles of track in each local subdivision. Each local subdivision shall then tax this property at the same levy as other property within the division and receive the appropriate amount of tax money (2).

The assessment of airline companies is similar to that of railroads. Each airline doing business in the state is required to file a report which includes the value of its flight property, total revenue and ton miles within the state, annual financial statement, and other operating information. From this report, the Commissioner of Revenue is to assess the value of the flight property actually used within the state

and tax it at the statewide average mill rate. The money so raised is then apportioned to the airports on a formula set down in the statutes (3).

Non-railroad companies which own and operate sleeping cars are assessed and taxed in a manner similar to railroads. They file a report listing property and operating information which forms the basis for assessment by the Commissioner. The total value of the company in the state is prorated to each local subdivision according to the mileage of such sleeping-car companies over the railroads within that division. The division levy is then imposed on that valuation the same as on other property within the division (4). Could the sleeping-car companies claim their property as personal if there were repeal of all or part of the personal property "Property is either: (1) real or immovable; or (2) personal or movable."

Telegraph companies are to be assessed on the basis of a report they must file which lists the value of their property, value of their shares, gross and net income, and operating information. This assessment is apportioned to the county auditors who shall levy at the same rate as other property with the money credited to each county (5).

Light or power, heating, water and gas companies and pipeline companies shall be assessed and taxed in a manner similar to railroad and telegraph companies with the tax money allocated to each appropriate district (6).

Would these centrally-assessed industries be discriminated against

if there were a repeal of the personal property tax? It would appear not, if the law expressly stated that they were to be given relief in their assessment equal to the value of all of their personal property or the percentage that was exempt. The present statutes governing these industries specify that not only tan-

gible property, but intangible property and all factors that relate to the business, are to be considered when valuation is made. In addition, these companies are to be taxed as a unit. Separating personal property from other assets may prove troublesome for property assessed on a unit basis.

Industries Taxed on the Value of Production

A second group of industries are taxed on their physical product. Grain and seed producers and operators of elevators, mills, and warehouses perhaps comprise the bulk of this taxation; however, honey and sugar beet producers also fall into this classification. Seed and grain dealers or producers and elevator operators are taxed one-eighth of one mill per bushel upon all grain and seed owned, raised, grown, or stored by such persons during such preceding year. This is to be in lieu of all other taxes(7).

Raw honey producers or dealers shall pay one-eighth of one mill per

twenty pounds on all raw honey owned, stored, received, or handled by such person during such preceding year. Producers and dealers of unprocessed sugar beets shall be taxed five-eighths of one mill per ton of unprocessed sugar beets owned, stored, received, or handled by such person during such preceding year. These taxes shall be in lieu of all other taxes. The taxes on grain and seed, raw honey, and unprocessed sugar beets shall be credited to the general school fund of the county wherein the products are located(8).

Gross Receipts Tax

Another group of industries pays tax on its gross receipts or earnings in lieu of all other property taxes. Private car line companies which are defined as all owners or operators (other than a railroad company operating a line of railroad) of all rolling cars other than sleeping cars are taxed 6 percent of their gross earning on business conducted in the state(9).

A similar tax is imposed on all persons, companies, joint stock associations or corporations engaged

in the business of conveying to, from, or through this state, money packages, gold, silver plate, or other articles by express. Both of the above mentioned taxes are paid into the general fund of the state(10).

Rural electric companies are taxed 2 percent upon the gross receipts derived from furnishing electric energy during the preceding year. The Commissioner of Revenue shall compute and certify this tax to the county auditor in each county. The tax is then prorated to

each school district on the basis of the gross receipts received by such company from its operations in each school district. This chapter of the statutes further classifies the property of rural electric companies which shall be deemed personal property and states that the 2 percent tax on gross receipts shall be in lieu of any other property taxes on this personal property (11).

Persons termed as transient farmers are taxed 3 percent upon the gross receipts derived from their

farming operations(12). Transient farmers are defined as

... any person, or persons, firm or corporation who engages in farming at any place or places in the state temporarily or permanently and who makes a practice of acquiring leases to real property for the sole purpose of cultivating the soil, growing and harvesting crops, and who has not become a bona fide resident of the state (13).

Banks

Banks are treated separately in the statutes of South Dakota. The taxation of national and state banks and other financial institutions is based on the net income of the business for the year and is in lieu of all other taxes and licenses, state,

county, and local, except taxes upon their real property. Corporations taxed under this chapter are exempt from other net income taxation by this state(14). As amended by the Legislature in 1969, this tax is 5½ percent on the net income of the bank(15).

Telephone Companies

Taxation of telephone companies in South Dakota is interesting. The property of telephone companies with gross receipts over one million dollars is centrally assessed by the Commissioner of Revenue under terms as specified for other centrally-assessed property with due consideration to be given to real and personal property, operating information, etc. The taxes so collected are credited to the appropriate city, county, and state general funds (16). At the present time the only companies covered by this statute are the Northwestern Bell Telephone Company and American Telephone and Telegraph Company(17).

Telephone companies with less than one million dollars in gross receipts are taxed a percentage of gross receipts according to one of two schedules. Schedule A relates to the average number of customers per mile of line while Schedule B is based on gross annual revenue. The Department of Revenue shall apply whichever schedule would result in the lesser tax, provided that no company shall pay less than fifty cents per year, per telephone. Monies received are credited to the appropriate school district(18).

Would repeal of the personal property tax upset the balance between the telephone companies paying an ad valorem tax and those

paying a gross receipts tax? If the law repealing the personal property tax provided that the Commissioner of Revenue should no longer include personal property in the assessment of those industries which he values, this would mean a de-

crease in property valuation for those companies which pay an ad valorem tax. If the tax structure within the telephone industry was equitable before repeal, inequities could result if the tax for one group was decreased.

Summary

The entire area of alternative taxes or centrally-assessed property could be ignored and the taxation of these items left undisturbed if the personal property tax were repealed. Much property which is defined by statutes as personal property is included under these forms of taxation but, as these items are stated separately, taxation on them could remain if personal property were exempted. The means used to replace revenues lost by personal property repeal could have a bearing on whether these alternative taxes should be changed or left undisturbed. If an income tax were enacted and those companies taxed separately paid a tax on income, would they be willing to also pay a gross receipts tax?

In many cases the statutes explicitly state that the gross receipts tax is in lieu of all other property taxes. In some cases it states that the tax is in lieu of all other property taxes except real property. Under these

conditions could not a gross receipts tax be construed as just another form of a tax on personal property? This would seem to indicate that if other industries receive tax relief in the form of exemption of personal property from taxation, those industries paying a gross receipts tax are entitled to comparable tax relief. On the other hand, if gross receipts taxes are in lieu of real property taxes, they could not be repealed completely or the industries paying a gross receipts tax would receive an unfair advantage.

Many of the industries paying alternative taxes are of the type where separation of real and personal property for assessment purposes presents irksome problems. Some of the property is hard to classify into either of these categories without questions arising. Public utilities and railroads, among others, are spread over several taxing jurisdictions and allocation of their personal property to each district would be difficult.

During the course of research for this report, several questions arose which are beyond the scope of this project but are worthy of additional investigation.

A comprehensive study of problems that have arisen in states that have repealed all or part of the personal property tax could aid in avoiding similar problems in South Dakota. Particular emphasis on the problems that have arisen in the classification of real or personal property would indicate the laws that may need to be changed or the new laws that need to be enacted. This paper looks briefly into the situation in North Dakota, and the problems encountered in that state are noted. But other states have repealed the personal property tax, and a study of these other states might point up added potential sources of trouble.

One major area for additional study revolves around a method of replacing revenues which would be lost to the local governments by repeal of the personal property tax. A detailed statistical report of the tax base of each taxing unit should be made. This would include, at the very least, a study of the composition of the property in the taxing district, the sales-assessment ratio,

the mill levy, trends in growth of real and personal property, and changes in the composition. A study of demographic factors, income, and sales might indicate a more satisfactory basis for replacement than that of property. This might also point to a new and better basis for debt limitation than property valuation.

The entire system of alternative or "in lieu" taxes merits investigation. It appears that these taxes were enacted one at a time when the need for additional revenue arose or when it was concluded that an industry was not paying sufficient taxes. This has resulted in a hodgepodge of taxation. Many of these taxes are unfair for the same reason that property taxes are cited as unfair. Production does not necessarily ensure profit, any more than property ensures income.

These are just a few of the many topics on which further research is indicated. Some of the research is necessary before a repeal of the personal property tax is undertaken in order to prepare the way for an orderly transition to some other form of financing for local governments. Other topics could be postponed but are necessary conditions for tax reform.

The urgent need for tax reform in South Dakota has prompted many persons to propose and encourage the repeal of all or part of the personal property tax. Without denying their position, this author has attempted to point up the need for adequate preliminary work before such a step is undertaken. The feeling is that a precipitous plunge toward repeal without careful groundwork could well raise more problems than it solves.

The first stated objective is the determination of the adequacy of the present South Dakota laws defining personal property. The conclusion must be that in the present situation there is room for diverse interpretations of the statutes which have failed to keep pace with the changes in technology and economic conditions, both of which affect the type of personal property in existence. Laws enacted in the early 1900's are used as the basis for classifying present-day taxable property which is far different than that envisioned when the laws were enacted. Anticipation of every potential source of disagreement over classification is impossible, but changes or additions to the present statutes could forestall many problems in the event of the repeal of the personal property tax.

The second stated objective is to determine if and how repeal of the

personal property tax might affect the capacity of governmental units to obtain the financing necessary to carry on the duties of government. Chapter 3 entails a lengthy discussion of some of the more obvious ways in which repeal of the personal property tax could affect the ability of governmental units to raise the necessary tax revenue for current expenses and capital outlay. Possible effects on the debt capacity of governments are also discussed. These are cited as probable sources of concern, but the exact result is indeterminable because of the many unknowns involved. There is no way of knowing exactly what provisions a repeal law would contain or what means would be used to replace revenues lost by a repeal.

The third objective, a listing of taxes based upon property valuation, is also covered in Chapter 3. Laws which involve property valuation as a basis for taxation are catalogued up to and including the 1970 Legislative session. An effort was made to include every situation which involved valuation, but the author realizes some may have been omitted. **The 1971 Session Laws** was not available when this paper was written so any items mentioned in those statutes are not included. The cataloguing was carried out with the view of assisting anyone

who may be involved in changing the statutes.

The fourth objective, a survey of industries which do not pay a conventional personal property tax, was completed without reaching a definitive answer. Here, again, the result depends on the final wording of the law repealing the personal property tax. Also, the assumption was made that at the present time, the overall tax structure is equitable and a balance exists among the industries which are subject to different forms of taxation. This assumption may not be correct. Whatever the rationale behind these various alternative taxes, and it is not always apparent, it would appear

that there must be a simpler method of securing an equitable and fair amount of tax revenue from these industries. If changes are to be made in the property tax, review of alternative taxes is also in order.

Repeal of the personal property tax can be accomplished; however, study and preparation would be required for a smooth transition to some other form of taxation. Personal property forms such a large portion of the present tax base that it is not possible to repeal the tax on personal property without substituting some other means of raising the required revenue for local government.

Selected Bibliography

1. Correspondence and Interviews

- King, Robert L. Statistician in the Office of State Tax Commissioner of North Dakota. Personal correspondence. June 15, 1971.
- Klein, Howard. Brookings City Assessor. Personal interview. July 9, 1971.
- Lockner, Allyn, Ph.D. Member of Council for Tax Decision. Personal interview. June 14, 1971.
- Radcliffe, Ben H. President of Farmer's Union. Personal correspondence. June 15, 1971.
- Rose, Gordon, Ph.D. Personal interview. June 16, 1971.
- Schulz, Alvin. Brookings County Auditor. Personal interview. June 7, 1971.
- Wiles, Floyd. Brookings County Assessor. Personal interview. June 30, 1971.
- Williams, Mrs. Louis. Member of the State Board of the League of Women Voters. Personal interview. June 30, 1971.
- Winckler, George. South Dakota Department of Revenue. Personal correspondence. June 22, 1971.
- ### 2. Government Documents
- North Dakota State Tax Department. "An Explanation of the Payback Formula." A research document issued February 1971. (Mimeographed.)
- Report of the North Dakota Personal Property Tax Commission.* Bis-

marck, N. Dak.: Bismarck Tribune, 1969.

South Dakota Compiled Laws 1967. 17 vols. Indianapolis: The Allen Smith Co., 1969.

South Dakota. *Biennial Report of the Attorney General of the State of South Dakota, 1967-1968.* (Pierre): n.n., 1968.

----- . Department of Revenue. *Annual Statistical Report of the Department of Revenue State of South Dakota, Fiscal 1969-1970.* (Pierre): n.n., 1970.

----- . *Fourteenth Annual Report of the Department of Revenue, Fiscal 1968-1969.* (Pierre): n.n., 1969.

----- . *The Laws Passed at the Forty-Fifth Session of the Legislature of the State of South Dakota.* Pierre: Hipple Publishing Co., 1970.

----- . *The Laws Passed at the Forty-Fourth Session of the Legislature of the State of South Dakota.* Pierre: Hipple Publishing Co., 1969.

----- . *The Laws Passed at the Forty-Second Session of the Legislature of the State of South Dakota.* Pierre: State Publishing Co., 1967.

----- . *The Laws Passed at the Forty-Third Session of the Legislature of the State of South Dakota.* Pierre: State Publishing Co., 1968.

..... *Reports of Cases Decided in the Supreme Court of the State of South Dakota XXX*. Pierre: State Publishing Co., 1913.

U. S. Department of Commerce. Bureau of the Census. *1967 Census of Governments*. Vol. II, *Taxable Property Values*. Washington: Government Printing Office, 1968.

3. Miscellaneous

Kneip, Richard F., Governor. "Special Message on Tax Reform." Address delivered at chambers of South Dakota House of Representatives, February 3, 1971.

SDEA Research Division. "Tax Levies South Dakota Independent School Districts." A research document issued 1969-1970. (Mimographed.)

References

Chapter 1

1. U. S., Department of Commerce, Bureau of the Census, *1967 Census of Governments*, Vol. II, *Taxable Property Values* (Washington: Government Printing Office, 1968), p. 27.
2. Statement by Dr. Allyn Lockner, member of the Council for Tax Decision, personal interview, June 14, 1971.
3. Figures secured from South Dakota, Department of Revenue, *Annual Statistical Report of the Department of Revenue State of South Dakota, Fiscal 1969-1970* ([Pierre]: n.n., 1970) pp. 40-41.
4. Lockner.

Chapter 2

1. Robert L. King, statistician in the Office of State Tax Commissioner of North Dakota, personal correspondence dated June 15, 1971.
2. *South Dakota Compiled Laws 1967* (Indianapolis: The Allen Smith Co., 1969), 2-14-2. (hereinafter cited as *SDCL 1967*).
3. *SDCL 1967*, 10-4-2.
4. *SDCL 1967*, 10-4-6.
5. *SDCL 1967*, 10-6-12.
6. *SDCL 1967*, 10-6-13.
7. *SDCL 1967*, 43-1-3.
8. *SDCL 1967*, 10-16-2.
9. Statement by Howard Klein, Brookings City Assessor, personal interview, July 9, 1971.

10. South Dakota, *The Laws Passed at the Forty-Second Session of the Legislature of the State of South Dakota* (Pierre: State Publishing Co., 1967), chap. 319.
11. South Dakota, *Biennial Report of the Attorney General of the State of South Dakota, 1967-68* ([Pierre]: n.n., 1968), pp. 199-203.
12. South Dakota, *Attorney General*, pp. 25-27.
13. South Dakota, *Attorney General*, p. 9.
14. *SDCL 1967*, 10-12-31.
15. *Bjornson v. Rostad* (1912) 30 S D 40 137 N W 567, Ann Cas 1915 A 1151.
16. George Winckler, Director Property Tax in South Dakota Department of Revenue, personal correspondence dated June 22, 1971.
17. Statement by Floyd Wiles, Brookings County Assessor, personal interview, July 1, 1971.
18. *Report of the North Dakota Personal Property Tax Commission* (Bismarck, N. Dak.: Bismarck Tribune, 1969), p. 7.
19. *SDCL 1967*, 43-1-5.

Chapter 3

1. *South Dakota Compiled Laws 1967* (Indianapolis: The Allen Smith Co., 1969), 9-12-17. (hereinafter cited as *SDCL 1967*)

2. *SDCL 1967*, 31-11-18.
3. *SDCL 1967*, 34-8-2.
4. Statement by Alvin Schulz, Brookings County Auditor, personal interview, June 7, 1971.
5. South Dakota, Department of Revenue, *Annual Statistical Report of the Department of Revenue State of South Dakota, Fiscal 1969-1970* ([Pierre]: n.n., 1970), pp. 74-75.
6. South Dakota, *Statistical Report Department of Revenue*, pp. 48-63.
7. SDEA Research Division, "Tax Levies South Dakota Independent School Districts," 1969-70. (Mimeographed.)
8. South Dakota, *Fourteenth Annual Report of the Department of Revenue, Fiscal 1968-1969* ([Pierre]: n.n., 1969), pp. 100-01.
9. *SDCL 1967*, 10-12-21.
10. *SDCL 1967*, 10-12-23.
11. *SDCL 1967*, 10-12-28.
12. *SDCL 1967*, 10-12-30.
13. *SDCL 1967*, 10-21-31.
14. *SDCL 1967*, 10-12-32, 33.
15. *SDCL 1967*, 10-12-36.
16. *SDCL 1967*, 5-17-20.
17. *SDCL 1967*, 10-12-6.
18. *SDCL 1967*, 7-25-1.
19. *SDCL 1967*, 7-26-5.
20. *SDCL 1967*, 7-27-1.
21. *SDCL 1967*, 10-10-3.
22. *SDCL 1967*, 10-12-9.
23. *SDCL 1967*, 10-12-12.
24. *SDCL 1967*, 10-12-13.
25. *SDCL 1967*, 13-37-16.
26. *SDCL 1967*, 27-5-8.
27. *SDCL 1967*, 34-5-2.
28. *SDCL 1967*, 34-8-5.
29. *SDCL 1967*, 34-8-19.
30. *SDCL 1967*, 34-8-23.
31. *SDCL 1967*, 34-9-5.
32. *SDCL 1967*, 34-31-3.
33. South Dakota, *The Laws Passed at the Forty-Fourth Session of the Legislature of the State of South Dakota* (Pierre: Hipple Publishing Co., 1969), chap. 25. (hereinafter cited as the *Laws of 1969*)
34. *Laws of 1969*, chap. 28.
35. *Laws of 1969*, chap. 264.
36. *SDCL 1967*, 41-18-12.
37. South Dakota, *The Laws Passed at the Forty-Fifth Session of the Legislature of the State of South Dakota* (Pierre: Hipple Publishing Co., 1970), chap. 244. (hereinafter cited as the *Laws of 1970*)
38. *SDCL 1967*, 31-11-19.
39. *SDCL 1967*, 31-11-20.
40. *SDCL 1967*, 9-38-43.
41. *SDCL 1967*, 9-38-45.
42. *SDCL 1967*, 9-38-76.
43. *SDCL 1967*, 9-38-78.
44. *SDCL 1967*, 9-43-2.
45. *SDCL 1967*, 9-47-4.
46. *SDCL 1967*, 14-4-7.
47. *SDCL 1967*, 14-4-8.
48. *SDCL 1967*, 34-9-1.
49. *SDCL 1967*, 50-6-13.
50. *Laws of 1969*, chap. 193.
51. *Laws of 1970*, chap. 59.
52. *Laws of 1970*, chap. 243.
53. *SDCL 1967*, 9-38-107.
54. *SDCL 1967*, 9-38-108.
55. *SDCL 1967*, 9-21-12.
56. *SDCL 1967*, 9-33-12.
57. *SDCL 1967*, 9-33-13.
58. *SDCL 1967*, 9-16-8.
59. *SDCL 1967*, 9-30-6.
60. *SDCL 1967*, 9-21-18.
61. *SDCL 1967*, 13-10-6.
62. *SDCL 1967*, 13-6-81.
63. *SDCL 1967*, 13-11-5.
64. *SDCL 1967*, 13-16-7.
65. *SDCL 1967*, 31-13-22.

66. *SDCL 1967*, 34-10-25.
 67. *SDCL 1967*, 34-10-26.
 68. *SDCL 1967*, 46-18-31, 41.
 69. South Dakota, *The Laws Passed at the Forty-Third Session of the Legislature of the State of South Dakota* (Pierre: State Publishing Co., 1968), chap. 1.
 70. *SDCL 1967*, 34-3-22.
 71. *SDCL 1967*, 38-22-25.
 72. *SDCL 1967*, 42-1-14.
 73. *SDCL 1967*, 10-13.
 74. See Chapter 3, (5).
 75. North Dakota State Tax Department, "An Explanation of the Payback Formula," (a research document issued February 1971), pp. 1-4. (Mimeographed.)
 76. North Dakota State Tax Department, p. 2.
- Chapter 4**
1. *South Dakota Compiled Laws 1967* (Indianapolis: The Allen Smith Co., 1969), 10-28-2. (hereinafter cited as *SDCL 1967*)
 2. *SDCL 1967*, 10-28.
 3. *SDCL 1967*, 10-29.
 4. *SDCL 1967*, 10-30.
 5. *SDCL 1967*, 10-34.
 6. *SDCL 1967*, 10-35; see also *SDCL 1967*, 10-37.
 7. *SDCL 1967*, 10-14.
 8. *SDCL 1967*, 10-15.
 9. *SDCL 1967*, 10-31-2.
 10. *SDCL 1967*, 10-32-2.
 11. *SDCL 1967*, 10-36.
 12. *SDCL 1967*, 10-42-2.
 13. *SDCL 1967*, 10-42-1.
 14. *SDCL 1967*, 10-43-4, 5.
 15. South Dakota, *The Laws Passed at the Forty-Fourth Session of the Legislature of the State of South Dakota* (Pierre: Hipple Publishing Co., 1969), chap. 266.
 16. *SDCL 1967*, 10-33-10.
 17. South Dakota, Department of Revenue, *Annual Statistical Report of the Department of Revenue State of South Dakota, Fiscal 1969-1970* ([Pierre]: n.n., 1970), p. 63.
 18. *SDCL 1967*, 10-33-21.